



2025:DHC:1625



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th November, 2024

Pronounced on: 12th March, 2025

+ CRL.A. 652/2014 & CRL.M.(BAIL) 1034/2016

VIJAY PAL

.....Appellant

Through: Mr. Sunil K. Mittal, Mr. Anshul Mittal,
Mr. Sameer Dawar, Mr. Vipin K.
Mittal, Mr. Kshitij Mittal and Ms.
Khushi Aggarwal, Advocates.

versus

C.B.I

.....Respondent

Through: Mr. Atul Guleria, SPP, Mr. Pankaj
Kumar with Mr. Aryan Rakesh,
Advocates for CBI.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed assailing the impugned judgment of conviction and order on sentence dated 19.04.2014 and 12.05.2014 respectively, passed by learned Special Judge, P.C. Act (CBI-09), Central District Tis Hazari Courts, Delhi, whereby, the present appellant has been convicted in CC No. 92/2011 arising out of RC No. 48(A)/04 under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, (for short, 'PC Act'), registered with CBI.



2. *Vide* the aforesaid judgment of conviction and order on sentence, the appellant has been convicted for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. The appellant was sentenced to rigorous imprisonment for a period of 3 years alongwith a fine of Rs. 25,000/- for the offence punishable under Section 7 of the PC Act and also sentenced to sentenced to rigorous imprisonment for a period of 3 years alongwith a fine of Rs. 25,000/- for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act.

FACTUAL BACKGROUND

3. Brief facts, necessary for the disposal of the present appeal, are as follows:

i) The present appellant was posted as Constable being No. 3589/PCR with the Excise Department of the GNCT of Delhi on deputation basis from Delhi Police in 2003. During 2002 and 2003, one Chetan Prakash S/o Babu Lal (hereinafter referred to as, 'complainant/PW-2') had captured several personnel of Delhi Police and Excise Department in a video taking money from bootleggers in the area under the jurisdiction of Police Station Uttam Nagar and the areas adjacent to it, in order to expose their corrupt practices. He had, then, filed a writ petition, i.e., **W.P.(CRL) 367/2004**, before this Court stating that he had recorded videos of police personnel and other government officials taking bribe from bootleggers and thereby seeking protection and direction for investigation by CBI in this regard. *Vide* order dated 04.10.2004, a Coordinate Bench of this Court directed the CBI to investigate the present matter. Accordingly, in compliance of the order passed



by this Court three separate Regular Cases were registered with CBI, ACB, New Delhi *vide* FIR Nos. RC DAI 2004 A 0048; RC DAI 2004 A 0049; RC DAI 2004 A 50.

ii) The proceedings in the present case arises out of RC DAI 2004 A 0048 as this RC is in respect of the incidents falling within the territorial jurisdiction of PS Uttam Nagar.

iii) The complainant/PW-2 has provided one VHS video cassette and five HI-8 (small) video cassettes to CBI through this Court which then, formed the basis of the present investigation. One of the places where complainant captured the video films, in a clandestine manner, was in front of the residential premises of Mahipal Sansi situated at JJ Colony, PS Uttam Nagar. Mahipal Sansi and his wife, Krishna Sansi, used to sell liquor bottles illegally from their premises.

iv) During the course of investigation, it was revealed that video films in question were prepared by the complainant/PW-2 on HI-8 video cassettes and he had copied its contents in VHS video cassette. Five such HI-8 and one VHS cassettes were kept in possession of CBI in sealed condition. The contents of these video recordings/films were shown to the complainant/PW-2 and several Police personnel of Delhi Police and the persons being featured in the video films were identified.

v) The appellant was posted and functioning as public servant with Delhi Police at the relevant point in time and when the said video film was captured, he was allegedly identified as being featured in that video (Marked as Exh-1 by CFSL Chandigarh) from 29:08 minute to 29:54 minute. It is alleged that



the appellant, in civil clothes, was seen having a conversation with the aforesaid Krishna Sansi, who was sitting on a cot. Thereafter, it is alleged that she is seen handing over at least one Rs. 100/- currency note to the present appellant, however, the latter appears to be insisting on receiving higher amount and Krishna Sansi appears to be bargaining him for less amount. It is apparent to note that there is no sound in the video recording in which the present appellant is seen to have demanding and accepting bribe. Based on the aforesaid incident, it is alleged that the present appellant was caught on camera accepting money as illegal gratification other than legal remuneration.

vi) The said video clipping in question was shown to the complainant/PW-2 and several police personnel of Delhi police and they alleged to have identified the appellant in the said video clipping.

vii) The original HI – 8 cassettes were forwarded to CFSL, Chandigarh for obtaining report on editing and tempering aspect. CFSL, Chandigarh *vide* its report No. CFSL/1255/06/Phy/187/06/1091 dated 19.12.2006 has opined that the video recordings in the said cassettes were camera originals and free from editing.

viii) Thus, after the completion of investigation, the appellant was stated to have committed offences punishable under Section 120B of the IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. The sanction for prosecution (Ex. PW-3/1) of the appellant was obtained from the competent authorities on 31.05.2007. Learned Trial Court, *vide* order dated 04.03.2011, had framed the charges for the offences punishable under Section



7 and Section 13(2) read with Section 13(1)(d) of the PC Act against the appellant.

ix) The prosecution in order to prove the aforesaid charges levelled against the appellant had examined 8 witnesses. Learned Trial Court after analysing the prosecution evidence, the statement of the appellant recorded under Section 313 of the CrPC had found the latter guilty of the charges levelled against him and sentenced him accordingly. Hence, the present appeal has been filed assailing the impugned judgment of conviction and order on sentence passed by the learned Trial Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Learned counsel appearing on behalf of the appellant, in support of the present appeal, has made the following submissions: -

i) Learned Trial Court had erroneously convicted the appellant on the basis of the prosecution evidence placed on record during the course of trial. The fundamental basis for the conviction of the appellant has been the alleged video recordings and its contents contained in the cassette. It is submitted that the complainant/PW-2, who has provided the said video recordings, was not personally involved in the transaction whereby the alleged charge of accepting illegal gratification has been levelled against the present appellant. It is the case of the appellant that the learned Trial Court has convicted him on the basis of the conjectures and surmises.

ii) Perusal of the impugned judgment would show that the conviction of the appellant has been solely based on the testimony of PW-2 and the alleged



video recording. Learned Trial Court has presumed the acceptance of bribe by the appellant and had prejudged the case against him.

iii) It is the case of the appellant that the woman, Krishna Sansi, from whom he has been seen accepting bribe has not been examined as witness during the course of trial. Therefore, there are major missing links and discrepancies in the case of the prosecution as the latter has miserably failed to prove the charges levelled against the appellant and the learned Trial Court has based the impugned judgment on the basis of presumptions.

iv) Prosecution has failed to establish the identity of the person who has been captured as handing over money to the appellant and even the place of the incident has neither been identified nor proved by any evidence. It is further case of the appellant that the learned Trial Court has simply accepted the case of prosecution on the basis of the statement of PW-2, who is an interested party in the present case.

v) Regarding the validity of the sanction for prosecution (Ex. PW-3/1) against the appellant, it is submitted that PW-3, DCP (PCR), Delhi Police, in his cross-examination has admitted that he had accorded the said sanction order on the basis of the FIR, enquiry report of ACP, Vigilance (PW-1) and the evidence collected by Investigating Officer of CBI. Attention of this Court has been drawn towards the testimony of the PW-3 and it is submitted that he, in his cross-examination, has stated that the said video recording/clipping was not produced before him for perusal. However, he had stated that only video identification memo and CD identification memo were produced before him.



In view of the aforesaid, it is submitted that the learned Trial Court has erred in placing reliance on the said sanction order for prosecution of the appellant.

vi) It is also pointed out that the original recording device used to record the said video recording has not been sent to CFSL for examination and the learned Trial Court has erred in relying on the said video recordings and concluding that the same were camera original videos. It is further pointed out that PW-6, expert witness, in his report (Ex. PW-6/A) had stated that there were a number of re-recordings in the cassettes used in the present case. Perusal of the said report given by PW-6 would show that there were various additions and deletions in the said video cassettes. Thus, it is contended that the said video recordings alongwith the expert report (Ex. PW-6/A) is liable to be discarded.

vii) Learned counsel for the appellant has placed reliance on the following cases in support of the present appeal: -

1. State (GNCT of Delhi) v. Netrapal Singh & Ors., 2024:DHC:136;
2. Neeraj Dutta v. State (GNCT of Delhi), 2023 Cri LJ 1856 (SC);
3. G.S. Matharoo v. CBI, 2012 SCC OnLine Del 480;
4. Mohd. Iqbal Ahmed v. State of Andhra Pradesh, AIR 1979 SC 677;
5. State of Karnataka v. Ameer Jan, AIR 2008 SC 108;
6. S.K. Saini & Anr. v. CBI, 2015 (3) JCC 2169;
7. R.K. Pathak & Anr. v. CBI, CRL.A. 567/2000 decided on 26.04.2019;
8. B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55;
9. Joginder Singh Malik v. CBI, CRL.A. 1302/2010 decided on 08.12.2022;



10.Surender Singh v. State (NCT of Delhi), 2014:DHC:5399

viii) Thus, it was prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant be acquitted.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/CBI

5. *Per contra*, learned SPP for CBI has made the following submissions: -
- i) Perusal of the testimony of the complainant/PW-2 would demonstrate that the present appellant, in his capacity as a public servant, had demanded and accepted illegal payments in return for allowing the illegal liquor business to operate. The combination of documentary, forensic and video evidence cogently and satisfactorily proves the charges levelled against the appellant. It is further pointed out that PW-7 has also identified the appellant as the one having posted in the Excise Department at the relevant point in time.
 - ii) Testimony of forensic expert, PW-6, has confirmed the authenticity of the video as well as the audio recordings and have also verified the originality and unaltered status of the recordings. The expert report being Ex. PW-6/A duly substantiates the evidentiary value of the video recordings presented before the learned Trial Court and no evidence of tampering as alleged by the appellant has been brought forward by him. More so, no suggestion has been put to the complainant/PW-2 in this regard. It is further the case of CBI that PW-6, expert witness from CFSL Chandigarh, has also not been cross-examined in this aspect.



iii) Crime Scene was identified by the complainant/PW-2 and the appellant was seen and identified in the video recordings as being indulged in demanding and accepting illegal gratification. It is pointed out that the presence of the present appellant has been duly proved at the crime scene through the testimony of the complainant/PW-2.

iv) It is the case of the CBI that from the perusal of the video recordings wherein the present appellant has been featured, he can be seen demanding and accepting bribe and the same has also been corroborated through the testimony of PW-2 as noted hereinabove.

v) It is submitted that the learned Trial Court has after detailed analysis placed reliance on the said video clippings/recordings to convict the present appellant and the said findings need not be interfered with as this Court did not have the occasion to scrutinize the said evidence and the contents of the said recordings. It is further submitted that no objection was raised by the appellant during the trial while the said video recordings were admitted by the learned Trial Court. Therefore, the said oversight cannot be agitated now. Reliance has been placed on **P.C. Purushothama Reddiar v. S. Perumal, (1972) 1 SCC 9**, to contend that if objections to the admissibility of an evidence has not been raised at the stage of its exhibiting, then, the same cannot be raised at the appellate stage.

vi) Reliance has been placed on **B. Noha v. State of Kerala, (2006) 12 SCC 277**, to contend that when the voluntary and conscious acceptance of money has been proved on record by the prosecution then, no further burden is cast on the latter to prove by direct evidence the demand or motive behind



the said act and the same can be deduced from the facts and circumstances of the case. Reliance has also been placed on **Hazari Lal v. State (Delhi Admn)**, AIR 1980 SC 873, to contend that the conviction of a person accused of commission of offences punishable under the Prevention of Corruption Act can be based on the statement of trap officer.

vii) It is further submitted that no objection or questions have been put by the appellant to the expert witness, PW-6, during his cross-examination regarding the authenticity or credibility of the said video recordings and the same is sought to be challenged by him in the present appeal. Reliance has been placed on **Mohd. Ibrahim and others v. Munni @ Zainab Bee, (2007) 1 ALT 511**, to contend that when the facts stated in the examination-in-chief of a witness are not disputed in the cross-examination, then, the same should be deemed to be admitted. Therefore, failure of appellant to dispute the authenticity of the video recordings during the cross-examination of PW-6 suggests an implied admission of his part in respect of the validity of the said recordings.

viii) It is further submitted that the testimony of PW-2 has cogently proved the charge of the demand and acceptance of illegal gratification by the appellant and no definite plea has been taken by the latter whereby aspersions could be casted on their testimonies. Reliance has been placed on **Shahaja @ Shahajan Ismail Mohd. v. The State of Maharashtra, 2022 SCC OnLine SC 883**, to contend that the aforesaid witness, who was present at the spot where the bribe money was handed over, has given consistent statement and there are no significant contradictions or improbabilities in his statement that would undermine his reliability.



ix) Learned SPP for CBI has submitted that **State (GNCT of Delhi) v. Netrapal Singh & Ors., 2024: DHC: 136**, is not applicable to the facts of the present case and the same is distinguishable as, in the said case, original of the video recording (footage) was not produced before the Court. In the said case, the Respondents therein were acquitted by the learned Trial Court and the same was affirmed by this Court. Thus, legal principles applicable in the present case are different to that which have been followed in the **Netrapal's case**. Moreover, in the present case, the complainant/PW-2 was an eye-witness, however, this was not the case in **Netrapal's case**. Thus, it was prayed that the impugned judgment of conviction and order on sentence be upheld.

ANALYSIS AND FINDINGS

6. Heard learned counsel for the parties and perused the record.
7. In the present case, the appellant has been convicted for offence punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the PC Act. A Constitutional Bench of the Hon'ble Supreme Court in **Neeraj Dutta (supra)** had dealt with the following issue: -

“3. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short “the Act”) would not arise. Thus, the proof of demand is a *sine qua non* for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and dehors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or



recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning “hostile” or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.”

Answering the aforesaid issue, the Constitution Bench held as under: -

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded



gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the



said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.”

(emphasis supplied)

8. In view of the aforesaid legal position, the prosecution needs to establish both demand and acceptance of a bribe. The Hon’ble Supreme Court in **Neeraj Dutta (supra)** has categorically held that in both the cases of offer to pay by the bribe giver or when the public servant makes a demand, both would have to be proved by the prosecution as a fact in issue. Therefore, mere acceptance or receipt of illegal gratification would not be sufficient to bring the case of the prosecution under Section 7 or Section 13(1)(d) and Section 13(2) of the PC Act. Presumption regarding demand and acceptance or an offer to pay of illegal gratification can be inferred only when the foundational facts have been proved by oral or documentary evidence.

9. In the present case, the learned Trial Court while convicting the appellant has solely relied on the testimony of complainant/PW-2 and the video cassette (Ex. P-1) which were produced by the said witness and played before the Court during the course of trial. Learned Trial Court while convicting the present appellant has exclusively relied on the said video footage played before it, to presume that the appellant had made a demand and accepted the bribe from one lady, Krishna Sansi. It is a matter of record that the aforesaid Krishna Sansi, was neither examined before the learned Trial Court nor was cited as a witness. The relevant portion of the PW-2’s



testimony recorded on 19.11.2012 before the learned Trial Court in respect to the video played is reproduced herein under: -

“(Shri Gottam from CFSL, has brought all the necessary equipments as per the instructions given on the last date.)

(The Hi 8 cassette is taken out from the sealed cover sealed with the seal of Court. The photograph and the transcript of the conversation prepared by CBI are also taken out. The cassette is played.)

Q: Can you identify Sh. Vijay Pal in the video clip being played before you?

A Yes I can identify Sh. Vijay Pal appearing in this clip. I had shot this clipping

Q.: Can you say after looking at the photograph of Sh. Vijay Pal just being shown to you is of the same person as is being shown in the video clipping and also inform whether the meta data appearing on the photograph 30 3 2003" 16:45:42" matches the meta data appearing on the screen where this frame has been freezeed now?

A.. I have seen the meta data appearing on the photograph and the frame which has been freezeed before me. They are the same. (It is also observed by the Court that the meta data appearing in the photograph matches the meta data in the frame which has been freezeed. It shows the accused in the picture. For the sake of future reference the photograph has been exhibited as Ex.PW2/C.)

Q. Listen to the conversation which is going on between the lady, in the video clipping, and Sh. Vijay Pal and inform if the transcript just been shown to you matches with the conversation which is taking place in the video clipping being shown to you?

A.: As far as I could hear the conversation from the side of the accused is concerned that is completely inaudible and nothing can be made out from it. From what lady was saying I could make out the following:

"kaam nahin, dhanda nahin, jo they de diye.....sau rupey hi toh kam de rahi hoon...jyada kam thode hi hain....le ja....agli baar sau pachas kam diye...nahin koi baat nahi chaarsau... sau rupey badi baat toh nahin...agli baar le liyo...sau rupey meri taraf reh gaye hain agli baar le liyo..."

They were parts of the conversation of the lady which were not clearly audible.

(The audio quality of the cassette is very poor. We had tried to hear the conversation with the help of head phone and also using the noise reduction equipment. I have asked the Ld. Defence Counsel as well as



the Ld. PP for CBI as to what they could make out from the conversation. The Ld. Defence Counsel submits that from the conversation what he could make out is as follows:

"kaam nahin, dhanda nahin kahan se doon...sau rupay hi kam kiye hain...jyada kam...kaun nahin agli baar...char sau rupay badi baat toh nahin..."

Ld. Defence Counsel submits that there were large parts of conversation of the lady from which nothing could be made out. What was the male (described as accused) in the clipping saying could not be made out altogether.

Ld. P.P for CBI submits that from the conversation he could make out as follows:

"kaamnahin,dhandanahin...sautohkamkiyejyadatohnahikiye...saurupeyto hbadibaatnahin...le ja..."

He also submits that he could not make out as to what the accused was saying in the clipping and large part of the conversation was not audible. What I could make out from the conversation is that it is only the voice of the lady from which something if at all can be made out. The male voice is completely inaudible. What I could pick up from the conversation is the following:

"Kaam nahin, dhanda nahin kahan se de doon...sau rupey hi toh kam hain...jyada nahin...agli baar...chaar sau...koi baat nahin...agli baar le liyo..."

This part of the conversation also could be made out by the accused, Ld. PP for CBI, Ld. Defence Counsel and the Court only after having heard the same repeatedly.

There was a transcript which was received from the CBI in this case after a direction had been given. I am keeping the same also on record for future reference and marked as Mark CA.

(The scene appearing in the picture can be described as follows:

1. In the first frame one can only see a male having money in his hand and there is a lady sitting on a takhat is in enimated conversation.
2. The male is trying to return the money which the lady appears to be refusing to take back and pushing the hand of the male as if to keep the money. The male tries to return the money again, but the lady refuses to take it back and finally the male keeps the money in his pocket. The currency notes visible in the video clipping are of Rs.100/-. It cannot be made out, however, as to how many currency notes are there, but they appear to be more than one. The male returns thereafter facing the camera. The person appearing in the picture appear to be the accused in the Court. At the time when the money is kept in the pocket his face was



not visible. His face becomes visible only after he comes out of the shed where this conversation was taking place.)

Q.: Can you tell the Court as to what you had seen at the spot?

A.: Before the videography of the above film I had visited the spot which is the residence of Sh. Mahipal Sansi, on the previous day, where I had met Sh. Mahipal Sansi and his wife who is the lady appearing in the above video clipping. When I had met her she was selling liquor illegally while sitting on the same 'takhat' visible in the video clipping. Sh. Mahipal Sansi as well as his wife knew me even before. They knew about this fact that I was making film of the police officials taking bribe from bootleggers. I had thereafter suggested them that if they wanted they could also get a film made of the police officials who have been taking money from them. This I had suggested because they had informed me that they did not want to do this job of selling liquor illegally, but they were forced to do this job by the police officials so that they could earn money from them. When ever they stop selling the liquor, the police officials implicate them in false cases. After my suggestion Mahipal Sansi as well as his wife had agreed to the fact that I may videograph the film of the police officials taking money from them. They had given me a place to sit on the first floor of the house inside the kitchen from the window of the said kitchen the spot was visible where they used to sell liquor and the police officials used to visit them for taking money. On the next day accordingly I had visited their residence and sat in the kitchen with my video camera.

I had thereafter shot this video while the accused present in the Court was taking money from the wife of Mahipal Sansi. On that day she was selling liquor from the morning and I could also see that the men were buying liquor from her and leaving her residence. I had seen then one man like the accused present in the Court, coming to the spot where the lady was selling liquor just outside her house under a shed. I had then captured the accused demanding the money from the wife of Mahipal Sansi and accepting money from her. At that time when I was making the film I was simply making the film of the events which were taking place where ever the money transactions were there not knowing at that time what is the name of the men who were taking money from her. After they had left I had informed Mahipal Sansi and also his wife that in the video I had captured two men taking money from the wife of Mahipal Sansi. They had seen the video clip from my camera and identified the persons who had taken the money from her. They did not know the names of the persons taking the money, but they informed that they were the police officials. They had also explained to me that the police officials those



who come to their premises do not disclose their names. On the next day again I had visited them for making the film, but this time they did not permit me to do so as they felt threatened that in case I am allowed to film the police officials accepting the money from them, the police officials may implicate them in false cases under NDPS Act. I had thereafter left.

The video clipping which has been seen in the Court today was not interpolated or manipulated by me and I had preserved it as such.

I want to add that after watching the video clipping Mahipal Sansi and his wife had also informed that the person shown in the clipping taking the money used to visit them every month for taking money so that they could sell liquor illegally. The conversation which was in the video clipping was in relation to the acceptance of the monthly payment by the accused herein.”

10. As already noted hereinabove, the said lady, Krishna Sansi, wife of Mahipal Sansi, was neither cited as witness by prosecution nor examined before the learned Trial Court. There was no prior complaint by the lady, Krishna Sansi or any other person. No one except the complainant/PW-2 identified the alleged spot which has been featured in the said video clipping. Admittedly, the voice of the person in the said video clipping is not audible. The same has also come on record from the cross-examination of the complainant/PW-2 recorded on 21.11.2012: -

“It is also correct that there was no name plate etc., which the said man was wearing. (Vol.) he was in plane cloths.

It has already come on record that voice of the man is not clearly audible.”

11. Since, there was no voice in the subject video recording in the present case, no voice samples were drawn. It is important to note that the video clipping relied upon by the learned Trial Court has been prepared with the



help of complainant/PW-2 who was not privy to the alleged conversation between the present appellant and lady Krishna Sansi. Complainant/PW-2 in his examination-in-chief dated 21.11.2012 has stated as under: -

“They had given me a place sit on the first floor of the house inside the kitchen from the window of the said kitchen the spot was visible where they used to sell liquor and the police officials used to visit them for taking money.”

Thus, admittedly the complainant/PW-2 was not present at the spot at the time when the said videos were captured.

12. It is also the case of the prosecution that the video in the present case was of the premises of Mahipal Sansi. The place from where the complainant/PW-2 has claimed to have captured the video was not in close vicinity to the spot where the present appellant was allegedly seen visiting the premises of Mahipal Sansi as being stated by him, as pointed hereinabove. Moreover, there is no site plan prepared by the Investigating Officer Dilip (PW-8) in the present case. It is interesting to note that even as per the case of the prosecution, complainant/PW-2 claimed to have shot series of videos at the premises of Mahipal Sansi where other police officials and officials of excise department were also allegedly seen visiting and caught taking bribe.

13. In the present case, the prosecution, apart from the complainant/PW-2, has not examined Mahipal Sansi and his wife, Krishna Sansi, who was alleged to be seen in the video captured by complainant/PW-2. Admittedly, there is no voice in the subject clipping wherein the present appellant was allegedly caught accepting illegal gratification by complainant/PW-2 and given the fact that the latter was inside the kitchen on the first floor from



whose window the alleged crime spot was visible, he could not have heard the conversation between the lady, Krishna Sansi and the present appellant.

14. As already highlighted hereinabove, the Hon'ble Supreme Court in **Neeraj Dutta** (*supra*) has categorically held that both in case of an offer to pay by the bribe giver without there being any demand from the public servant and when the public servant makes a demand and the bribe giver accepts the demand and tenders the demand of gratification, such offer or the demand respectively have to be proved by the prosecution as a fact in issue. In the present case, admittedly, Krishna Sansi has neither been cited as witness nor examined as witness during the course of trial. There was no prior complaint on behalf of Mahipal Sansi or his wife, Krishna Sansi or any other person with respect to any demand of illegal gratification or bribe made by the present appellant. Even an offer to pay bribe by the giver, i.e., Krishna Sansi, has not been proved on record. It is pertinent to note that none of the witnesses examined by the prosecution during the course of the trial had identified the said lady, Krishna Sansi or her husband, Mahipal Sansi. The version of the complainant/PW-2, Chetan Prakash, thus, comes within the realm of hearsay evidence.

15. In the present appeal, it is not the case of the prosecution that there were complaints made by either Mahipal Sansi or Krishna Sansi, at any point of time to the CBI with regard to the demand of bribe by the present appellant. It is complainant/PW-2 who claims to have recorded the events as he wanted to help Mahipal Sansi and his wife, Krishna Sansi, from illegal extortion of money committed by the police personnel from Delhi Police and



excise department. It is noted that the complainant/PW-2 in the very first para of his examination-in-chief itself, had stated as under: -

“One person by the name of Shri Pal, used to sell & supply illegal liquor near my residence. I made complaint against him in PS Uttam Nagar and also to DP West on my complaint, police seized illicit liquor of said Shri Pal criminal cases were also registered against him in PS Uttam Nagar and special staff, DCP West. I had also made complaint against another person viz. Shri Diwan Singh, who was also indulged in selling & supplying illicit liquor in Madhu Vihar area under P.S. Dabri. Shri Dewan was friend/partner of Shri Pal on my complaint, police had seized illicit liquor of Shri Devansh Singh and several cases were registered against him at P.S. Dabri and P.P. Mangla Puri.

Police officials, who were in collusion with Shri Diwan Singh and Shri Pal started harassing me several false cases were registered against me at P.S. Dabri and I got declared Bad Character (B.C.) in the record maintained at PS Dabri.”

This reflects that the complainant/PW-2 did bear grudge against police officials.

16. Equally important is the fact that besides the complainant/PW-2, no one has stated anything or has been examined by the prosecution about any demand of bribe. Thus, the demand of bribe on behalf of the appellant cannot be proved in absence of examination of the said lady named, Krishna Sansi.

17. Learned Trial Court has heavily relied upon the video cassette (Ex. P-1) which was sent to FSL. However, *vide* a report (Ex. PW-6/A) dated 19.12.2006 regarding the said video cassette, it has come on record that the video cassettes were “*rerecorded (over recording in order to delete some portion that too in-camera)*”. It is relevant to note that the device, i.e., handycam, by which the said videos were alleged to have been recorded by



complainant/PW-2 was never produced before the CBI nor sent to the FSL for examination.

18. Learned counsel for the appellant had also relied upon **Netrapal Singh** (*supra*), whereby State's appeal against acquittal of the respondent/accused therein was dismissed by this Court. It is pertinent to note in the said appeal, the same complainant/PW-2, Chetan Prakash, was the main witness and a similar video cassette was being relied upon in order to establish the case of the prosecution. In the said case as well, the video cassette was sent for analysis and a report was given that the recording was found free from any addition, deletion, or tampering. In the said case, FSL report, however, had stated that it could not opine whether the video footage therein was original as the recording device was not sent for FSL examination. The relevant paras of the said judgment read thus: -

“29. In the aforesaid context, the observation made by the learned Special Judge with regard to admissibility of the said video cassette (Ex. P-1) needs to be examined. The learned Special Judge, in his finding, has examined that the testimony of Chetan Prakash Sharma (PW-4) as recorded on 18.04.2015 and made the following observations:

“7.1.2...A perusal of the testimony of Chetan Sharma (PW-4), as recorded on 18.04.2015 indicates that the sequence at Sri. No.-IO displays the starting time of recording as 19 : 22 Hours and concluding time as 19 : 42 Hours. It was observed by the court that the sequence had jumped time from 19 : 27 : 23 Hours to 19 : 28 : 02 Hours and 19 : 30 Hours to 19 : 38 Hours. Meaning thereby, either the recording was stopped in between the sequence, or, some portion has been deleted, after the recording had been done. The FSL report being silent as regards this sequence; in my opinion, the same is not a complete & correct report. Similarly the FSL report has not noticed and opined about a TV clip of ETC. Channel, in between the alleged recordings of corrupt activity.”

30. Similarly, in Para 7.2, it has been observed as under:



“7.2 However, in the absence of proof of actual demand of bribe, it can be held that there is any incriminating material against the accused persons. Mere identification of their pictures in cassette Bx.P-1 can not be said to be incriminating as cassette Ex.P-1 itself is \ inadmissible in evidence. The video footage contained in Bx.P-1 has not been opined by FSL to be the original recording. It has been demonstrated by the Id. defence counsels that the video cassette contains clippings of ETC. Channel in between the alleged incriminating clips, which demonstrates that the cassette is not original recording. It was copied on a pre-recorded cassette. **It has also not been brought on record that the recording device had the provisions of making direct recording on the cassette or it first recorded on a memory stick and then transferred the contents to cassette. The recording device was admittedly not sent to FSL for analysis. Thus, there is no evidence that video recording contained in cassette Bx.P-1 is original recording and, thus. Primary Evidence admissible u/sec-62 of the Indian Evidence Act. In the absence of certificate u/sec.-65/B of the Indian Evidence Act, the cassette Ex.P-1 is apparently inadmissible as Secondary Evidence, as well.** View taken by the Hon'ble Supreme Court of India in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473's case is as under:—

“Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i. e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions ulsec.-65-B(2) of the Indian Evidence Act-



- (i) The electronic record containing the information should have been produced by the computer, during the period over, which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from, which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity. U/sec-65 (4) of the Indian Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:
 - (a) There must be a certificate, which identifies the electronic record containing the statement;
 - (b) The certificate must describe the manner in which the electronic record was produced;
 - (c) The certificate must furnish the particulars of the device involved in the production of that record;
 - (d) The certificate must deal with the applicable conditions mentioned u/sec-65 B(2) of the Indian Evidence Act; and
 - (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

(emphasis supplied)

31. The aforesaid analysis of the learned Special Judge, that the contents of the video cassette, as played during the course of evidence, were on some other prerecorded data and there were chances that the recording was stopped in between or some portions were deleted, is a possible view. **It is also pertinent to note that Dr. SK Jain (PW-11), in his testimony, also submitted that whether the recording in the said cassette was original could not be determined as the recording device was not sent to FSL despite request for the same.** Furthermore, in the



cross-examination of Chetan Prakash Sharma (PW-4), he asserted that he used a new blank cassette between 14.10.2005 to 22.10.2005. However, the same is contradictory as the cassette (Ex. P-1) which was played during the course of evidence contained clippings of ETC. channel. Finally, the fact that the said cassette (Ex. P-1) was not supported by a certificate under Section 65B of the Indian Evidence Act, the same could not be admitted as secondary evidence, as it had come on record that there was no evidence that the recording contained in the cassette (Ex. P-1) was the original recording.”

(emphasis supplied)

19. It is matter of record that investigation in the present FIR-RC was initiated in pursuance of the order dated 04.10.2004 passed by a Coordinate Bench of this Court in **W.P.(CRL) 367/2004**. As already noted hereinabove, there were different Corruption Cases arising out of the present FIR-RC in respect of the different police personnel. Out of those cases in *CBI v. Meghraj* (CC No. 89/2011) and *CBI v. Ram Kumar & Anr.* (CC No. 91/2011), it has come on record by way of the testimony of the complainant/PW-2 herein, that the device by which the subject video clippings were recorded was never sent to FSL for examination. Also, in **Netrapal's case** (*supra*), the proceedings were initiated similarly on the basis of the video cassettes handed over to CBI for investigation in pursuance of the order passed by this Court and the device by which the subject video recordings were alleged to have been recorded was never sent for examination. In these circumstances, it is not in dispute that it is the same device, i.e., handycam camera, in all these cases which was not sent for FSL examination as the proceedings were initiated in pursuance of the same order in the present appeal, including others which have been disposed of by this Court *vide* separate judgments of the even date and all these cases had arisen out of the same FIR-RC. The FSL expert PW-6, has himself in his



report, Ex. PW-6/A, had stated that the video cassettes were “*rerecorded (over recording in order to delete some portion that too in-camera)*”.

20. In these circumstances, in the considered opinion of this Court it is not safe to rely upon the videography as the same cannot take place of the primary evidence, i.e., the statement of Krishna Sansi, in respect of the fact that whether she had offered bribe or there was a demand of bribe from the appellant. In absence of any other corroborative evidence, conviction for the offences punishable under Section 7 and Section 13(1)(d) of the PC Act cannot be sustained. Again, it is reiterated that the present case is not one, where complaint was made and verification had been done with regard to its contents and the proceedings were conducted in pursuance of such a complaint.

21. In view of the aforesaid circumstances, the prosecution has not been able to prove their case beyond reasonable doubt.

22. In the totality of the facts and circumstances of the present case, the present appeal is allowed and impugned judgment of conviction and order of sentence dated 19.04.2014 and 12.05.2014 respectively are set aside. The appellant stands acquitted of the charges levelled against him.

23. Bail bonds stand discharged.

24. Pending applications, if any, also stand disposed of accordingly.

25. Copy of the judgment be sent to the concerned jail superintendent for necessary information and compliance.



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26. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

MARCH 12, 2025/kr